IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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APR 0 6 2004

Technology Center 2100

In re Application for:

Engstrom

Application No.: 09/718,870

Filed: November 20, 2000

For: Multi-plane Metaphoric Desktop
        GUI & Methods of Operation
        Associated Therewith

Examiner: Vu, Kieu D

Art Group: 2173

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

<u>Appellant's Brief Under 37 C.F.R. §1.192 In Support Of</u>
<u>Appellant's Appeal To The Board Of Patent Appeals And Interferences</u>

Dear Sir:

The Appellant hereby submits this Brief in support of their appeal from a final

decision by the Examiner, mailed November 05, 2003, in the above referenced case.

The final decision was in response to arguments filed on August 25, 2003, in response

to an earlier office action, mailed May 22, 2003. Appellant respectfully requests

consideration of this appeal by the Board of Patent Appeals and Interferences for

allowance of the present patent application.

(1) Real Party In Interest

The real party in interest is Xoucin, Inc, a corporation of Washington, having its primary place of business at 550 Kirkland Way, Suite 100, Kirkland, WA 98033.

(2) Related Appeals And Interferences

To the best of Appellants' knowledge, there are no appeals or interferences related to the present appeal, which will directly affect, be directly affected by, or have a bearing on the Board's decision.

(3) Status Of The Claims

Claims 1-24 were rejected in the Final Office Action dated April 10, 2003. Claims 1-24 remain pending herein and are reproduced, as pending, in Appendix A.

(4) Status of Amendments

No claim amendments have been made since the mailing date of the final rejection.

(5) Summary of the invention

Embodiments of the present invention include an improved graphical user interface (GUI), computing environments and apparatuses that employ the GUI. More specifically, the GUI is an improvement over the well known metaphoric desktop GUI. An example of the well known metaphoric desktop GUI is the metaphoric desktop GUI

employed by the family of Windows ® OS, available from Microsoft Corporation of Redmond, Washington.

Unlike the well known prior art metaphoric desktop GUII where execution results of ALL applications of the computing environment are presented in one plane of the metaphoric desktop (the visible front plane), the present invention improves over the prior art by allowing the execution results of some of applications of the computing environment be presented in another plane of the metaphoric desktop (which inherently is the invisible back plane, as there are only two planes to a metaphoric desktop, the visible front plane, and the invisible back plane).

Resultantly, the present invention offers a number of advantages over the prior art, e.g. allowing a user to have some applications "invisibly" present their execution results at the second (back) plane, and these execution results are made visible only when the user elects to "flip" the two planes (i.e. making the previously "invisible" back plane become the "visible" front plane, and the prior "visible" front plane become (at least temporally) the "invisible" back plane). Accordingly, the user may concurrently run some less sensitive applications "publicly" (visible), and other more sensitive applications "privately" (invisible), and view the execution results of the more sensitive applications only when the surrounding environment is sufficiently "private".

(6) Issues Presented

I. Whether claims 1, 3-6, 11, 13-16 and 21-24 are patentable under 35 U.S.C. §102.

II. Whether claims 2, 7-10, 12 and 17-20 are patentable under 35 U.S.C. §103

(7) Grouping of claims

For purposes of this appeal, based on the above listed grounds of rejection, all claims 1-24 stand or fall together.

(8) Arguments

Rejection of claims 1, 3-6, 11, 13-16 and 21-24 under 35 U.S.C. §102 was improper because *Horvitz* failed to teach each and every limitation of claims 1, 11 and 21.

Claim 1 as pending cites:

1. In an apparatus including a display, a method of operation comprising:

displaying first execution results of a first plurality of applications in <u>a first plane of a metaphoric desktop</u>; and

displaying second execution results of a second plurality of applications in <u>a second plane of the metaphoric desktop</u>. (underline added).

Accordingly, as summarized earlier, claim 1 clearly requires execution results of some applications be presented in <u>a first plane of</u> a metaphoric desktop, and execution results of other applications be presented in <u>a second plane of</u> the metaphoric desktop.

Note that the claim language does not say "a first/second virtual/logical display plane rendered on the metaphoric desktop", instead, the claim language recites first/second planes <u>of</u> the metaphoric desktop.

It is well settled that anticipation under 35 U.S.C. §102 requires the disclosure in a signal piece of prior art of **each and every** limitation of a claimed invention. *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052, 32 USPQ2d 1017, 1019 (Fed. Cir. 1994). Thus to anticipate the present invention, *Horvitz* must disclose every element listed above.

In rejecting claim 1, the examiner reasoned that *Horvitz* teachings of multiple display "planes" of a "WORKSPACE" fully anticipated the recited limitations.

Applicant respectfully disagrees.

Horvitz' WORKSPACE is three-dimensional (see e.g. lines 1-2 of the Abstract). Its system includes an isometric display system that performs geometric transformation operations on rectangular windows to convey the impression to the user that the windows are positioned in a three-dimensional space (col. 3, lines 10-15). Accordingly, the "planes" of *Horvitz* are logical planes rendered <u>on</u> the 2-D plane of a display surface.

To distinguishes his invention over the prior art, *Horvitz* stated in col. 1, lines 51-55, "The ability to resize and move windows as well as to overlay or stack windows on top of each other essentially provided the same type of workspace available on a <u>physical two dimensional tabletop (desktop) workspace</u> except on a smaller scale." (Underline and the work "desktop" added).

Thus, *Horvitz* clearly considers his 3-D logical WORKSPACE to be different and distinct from a 2-D <u>metaphoric desktop,</u> which as discussed earlier, inherently has only two planes, the "front" plane which is normally visible, and the "back" plane which is visible only if the planes are flipped.

Applicant submits another measure the Board can appreciate that *Horvitz* could not have possibly anticipated claim 1, is examining the "privacy" claim 1 can offer for the computing scenario described in the Summary of Invention section. The "privacy" is a capability that *Horvitz* cannot provide, because even if a user is to minimize an application window in *Horvitz*, the reduced icon is still visible. The only way a user can avoid someone overlooking his/her shoulder from observing the user running an application, under *Horvitz,* is by terminating the application. Accordingly, if *Horvitz* cannot offer at least one of functions offered by the recited structure, *Horvitz* could not possible have anticipated the recited structure that provided the function.

Thus, the Examiner is clearly in error to read *Horvitz's* teaching of multiple logical display planes of a virtual 3-D WORKSPACE rendered on a display surface, as having anticipated Applicant's novel teaching of multi-plane displays on the planes <u>of</u> a conventional <u>metaphoric desktop.</u>

Claims 11 and 21 contain in substance the same limitations as claim 1. Accordingly, for at least the same reasons, the limitations are not fully anticipated by *Horvitz.*

Claims 3-6, 13-16 and 22-24 depend on claims 1, 11 and 21 respectively, incorporating their limitations. Thus, for at least the same reasons, claims 3-6, 13-16 and 22-24 are not fully anticipated by *Horvitz.*

Rejection of claims 2, 7-10, 12 and 17-20 under 35 U.S.C. §103 was improper because *Horvitz* failed to teach each and every limitations of claim 1, 11 and 21.

Claims 2, 7-10, 12 and 17-20 depend on claims 1, 11 and 21 respectively, incorporating their limitations. Since claims 1, 11 and 21 are patentable over *Horvitz,* therefore, by definition, claims 2, 7-10, 12 and 17-20, with added limitations, cannot possibly be obvious in view of *Horvitz.*

(9) Conclusion

Appellant respectfully submits, for at least the reasons set forth earlier, all pending claims 1-24 are patentable, and requests that the Board of Patent Appeals and Interferences overrules the Examiner, and directs allowance of the rejected claims.
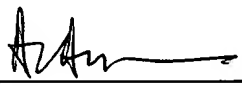
(10) Epilogue

This brief is submitted in triplicate, along with a check for $155 to cover the filing of appeal brief fee for a small entity as specified in 37 C.F.R. §1.17(c). We do not believe any other fees, in particular extension of time fees, are needed. However, should that be necessary, please charge our Deposit Account No. 500393.

In addition, please charge any shortages and credit any overages to said Deposit Account.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

Dated: 3/29/0A

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Appendix A – Claims As Pending

1   1. (Original) In an apparatus including a display, a method of operation comprising:

2   displaying first execution results of a first plurality of applications in a first

3   plane of a metaphoric desktop; and

4   displaying second execution results of a second plurality of applications in a

5   second plane of the metaphoric desktop.

1   2. (Original) The method of claim 1, wherein said second plurality of applications

2   are on-line applications, and the method further comprises monitoring for the

3   apparatus being connected on-line.

1   3. (Original) The method of claim 1, wherein said method further comprises

2   morphing from said first plane of the metaphoric desktop to the second plane of the

3   metaphoric desktop in response to detection of a predetermined event.

1   4. (Once Amended) The method of claim 3, wherein said morphing comprises

2   animating a 180 degree rotation of the metaphoric desktop over a selected one of a

3   diagonal axis, a vertical axis and a horizontal axis.

1   5. (Once Amended) The method of claim 3, wherein said morphing comprises

2   animating a plurality of 180 degree rotations of a plurality of portions of the

3   metaphoric desktop over a selected one of a plurality of corresponding vertical axes

4   and a plurality of corresponding horizontal axes.

1   6. (Original) The method of claim 1, wherein said first and second planes are front

2   and back planes of the metaphoric desktop.

1   7. (Once Amended) The method of claim 1, wherein

2   said displaying of first execution results of the first plurality of applications in a

3   first plane of a metaphoric desktop comprises storing pictorial representations of

4   said first execution results into a standard display screen buffer by a graphics

5   service; and

6   said displaying of second execution results of the second plurality of applications

7   in a second plane of the metaphoric desktop comprises redirecting said graphics

8   service to store pictorial representations of said first execution results of said first

9   plurality of applications to an alternate display screen buffer, and storing pictorial

10   representations of said second execution results of said second plurality of

11   applications into said standard display screen buffer.

1   8. (Original) The method of claim 7, wherein

2   said second plurality of applications are on-line applications; and

3   said redirecting of said graphics service to store pictorial representations of

4   said first execution results of said first plurality of applications to an alternate display

5   screen buffer, and subsequent storing of pictorial representations of said second

6   execution results of said second plurality of applications into said standard display

7   screen buffer, are initially performed in response to said apparatus being connected

8   on-line.

1   9. (Original) The method of claim 8, wherein the method further comprises

2   resuming said storing of pictorial representations of said first execution results of

8

3   said first plurality of applications to said standard display screen buffer by said

4   graphics service.

1   10.(Original) The method of claim 9, wherein said resumption are performed in

2   response to a user request to return to said first plane of said metaphoric desktop.

1   11.(Original) An apparatus comprising

2   storage medium having stored therein a plurality of programming instructions

3   designed to display first execution results of a first plurality of applications in a first

4   plane of a metaphoric desktop, and second execution results of a second plurality of

5   applications in a second plane of the metaphoric desktop; and

6   a processor coupled to the storage medium to execute the programming

7   instructions.

1   12.(Original) The apparatus of claim 11, wherein said second plurality of

2   applications are on-line applications, and the programming instructions are further

3   designed to monitor for the apparatus being connected on-line.

1   13.(Original) The apparatus of claim 11, wherein said programming instructions are

2   further designed to morph from said first plane of the metaphoric desktop to the

3   second plane of the metaphoric desktop in response to detection of a predetermined

4   event.

1   14.(Once Amended) The apparatus of claim 13, wherein said programming

2   instructions are designed to effectuate said morphing by animating a 180 degree

3   rotation of the metaphoric desktop over a selected one of a diagonal axis, a vertical

4   axis and a horizontal axis.

1   15.(Once Amended) The apparatus of claim 13, wherein said programming

2   instructions are designed to effectuate said morphing by animating a plurality of 180

3   degree rotations of a plurality of portions of the metaphoric desktop over a selected

4   one of a plurality of corresponding vertical axes and a plurality of corresponding

5   horizontal axes.

1   16.(Original) The apparatus of claim 11, wherein said first and second planes are

2   front and back planes of the metaphoric desktop.

1   17.(Once Amended) The apparatus of claim 11, wherein said programming

2   instructions are designed to effectuate

3   said displaying of first execution results of the first plurality of applications in a

4   first plane of a metaphoric desktop by storing pictorial representations of said first

5   execution results into a standard display screen buffer by a graphics service, and

6   said displaying of second execution results of the second plurality of applications

7   in a second plane of the metaphoric desktop by redirecting said graphics service to

8   store pictorial representations of said first execution results of said first plurality of

9   applications to an alternate display screen buffer, and storing pictorial

10   representations of said second execution results of said second plurality of

11   applications into said standard display screen buffer.

1   18.(Original) The apparatus of claim 17, wherein

2   said second plurality of applications are on-line applications; and

3   said programming instructions are designed to initially perform said

4   redirecting of said graphics service to store pictorial representations of said first

5   execution results of said first plurality of applications to an alternate display screen

6   buffer, and subsequent storing of pictorial representations of said second execution

7   results of said second plurality of applications into said standard display screen

8   buffer, in response to said apparatus being connected on-line.

1   19.(Original) The apparatus of claim 18, wherein the programming instructions are

2   further designed to resume said storing of pictorial representations of said first

3   execution results of said first plurality of applications to said standard display screen

4   buffer by said graphics service.

1   20.(Original) The apparatus of claim 19, wherein said programming instructions are

2   designed to perform said resumption in response to a user request to return to said

3   first plane of said metaphoric desktop.

1   21.(Original) A graphical user interface comprising:

2   a metaphoric desktop having a first and a second plane;

3   the first plane being used to display execution results of a first plurality of

4   applications; and

5   the second plane being used to display execution results of a second plurality of

6   applications.

1   22.(Original) The graphical user interface of claim 21, wherein the graphical user

2   interface further includes the metaphoric desktop morphing from a selected one of

3   the first and second planes to the other.

1   23.(Once Amended) The graphical user interface of claim 22, wherein said

2   morphing comprises a 180 degree rotation of the metaphoric desktop over a

3   selected one of a diagonal axis, a vertical axis and a horizontal axis.

1   24.(Once Amended) The graphical user interface of claim 22, wherein said

2   morphing comprises a plurality of 180 degree rotations of a plurality of portions of

3   the metaphoric desktop over a selected one of a plurality of corresponding vertical

4   axes and a plurality of corresponding horizontal axes.
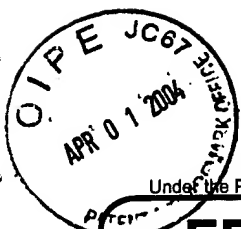
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FEE TRANSMITTAL
for FY 2004
Effective 10/01/2003. Patent fees are subject to annual revision.

Complete if Known	
Application Number	09/718,870
Filing Date	11/20/2000
First Named Inventor	Eric Engstrom
Examiner Name	Vu, Kieu D
Art Unit	2173
Attorney Docket No.	109911-130429

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[✔] Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	($) 165.00

METHOD OF PAYMENT (check all that apply)

[✔] Check [ ] Credit card [ ] Money Order [ ] Other [ ] None

[✔] Deposit Account:

Deposit Account Number	500393
Deposit Account Name	Schwabe, Williamson et al

The Director is authorized to: *(check all that apply)*

[ ] Charge fee(s) indicated below   [✔] Credit any overpayments

[✔] Charge any additional fee(s) or any underpayment of fee(s)

[ ] Charge fee(s) indicated below, **except for the filing fee** to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code	Fee ($)	Small Entity Fee Code	Fee ($)	Fee Description	Fee Paid
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) ($) 0.00

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims		Fee from below	Fee Paid
Total Claims	[ ] -20** = [ ]	X	[ ] =	[ ]
Independent Claims	[ ] - 3** = [ ]	X	[ ] =	[ ]
Multiple Dependent			[ ] =	[ ]

Large Entity Fee Code	Fee ($)	Small Entity Fee Code	Fee ($)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) ($) 0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity			
Fee Code	Fee ($)	Fee Code	Fee ($)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for *ex parte* reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	165
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) _____

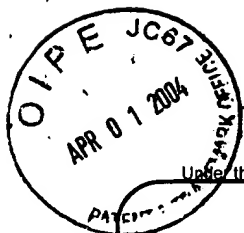*Reduced by Basic Filing Fee Paid   **SUBTOTAL (3)** ($) 165.00

SUBMITTED BY

		(Complete *(if applicable)*)	
Name (Print/Type)	Aloysius T.C. AuYeung	Registration No. (Attorney/Agent) 35,432	Telephone 503-222-9981
Signature		Date	03/29/2004

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/718,870
Filing Date	11/20/2000
First Named Inventor	Eric Engstrom
Art Unit	2173
Examiner Name	Vu, Kieu D
Attorney Docket Number	109911-130429

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Total Number of Pages in This Submission

ENCLOSURES   *(Check all that apply)*

- [✔] Fee Transmittal Form
  - [✔] Fee Attached
- [ ] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Response to Missing Parts/ Incomplete Application
  - [ ] Response to Missing Parts under 37 CFR 1.52 or 1.53

- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
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- [ ] CD, Number of CD(s) _____

- [ ] After Allowance communication to Technology Center (TC)
- [ ] Appeal Communication to Board of Appeals and Interferences
- [✔] Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- [ ] Proprietary Information
- [ ] Status Letter
- [✔] Other Enclosure(s) (please Identify below):

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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	SCHWABE, WILLIAMSON & WYATT, P.C.
Signature	
Date	03/29/2004

CERTIFICATE OF TRANSMISSION/MAILING

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Typed or printed name	Heather L. Adamson		
Signature		Date	03/29/2004